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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DIGBY ADLER GROUP, LLC d/b/a
BANDAGO, a California limited
liability company,

Plaintiff,

VS.

IMAGE RENT A CAR, INC., a New York corporation; VAN RENTAL CO, INC., a New York corporation; GAD SEBAG, an individual; and SHNEIOR ZILBERMAN, an individual,

Defendants.

Case No.: 3:10-cv-00617-SC

**DECLARATION OF STEVEN A.
HEATH IN SUPPORT OF
DEFENDANT GAD SEBAG'S
MOTION FOR SUMMARY
JUDGMENT**

Date: January 9, 2015
Time: 10:00 a.m.
Ctrm.: 1 [17th Floor]

DECLARATION OF STEVEN A. HEATH

I, STEVEN A. HEATH, hereby affirm the following:

1. I am an attorney duly licensed to practice before all courts of the State of California, and the United States District Court for the Northern District of California. I am a partner at Heath & Steinbeck, LLP, counsel of record for Defendants Image Rent A Car, Inc., Van Rental Co., Inc., Shneior Zilberman, and Gad Sebag (collectively, “Defendants”) in this action.

2. If called as a witness, I could and would competently testify to all facts stated in this declaration. I certify that all facts stated herein are true and correct based on my knowledge and belief.

3. Attached as **Exhibit 1** is a true and correct copy of relevant portion of the March 3, 2014 Examination Before Trial of Chana Vilenkin in *Gregory Messer, Esq., as Trustee of the Estate of Image Rent A Car v. Schenior Zilberman, et al.*, United States Bankruptcy Court for the Eastern District of New York, Adversary Proceeding No. 1-11-42390. I downloaded a copy of this document from the Public Access to Court Electronic Records system (“PACER”) on December 22, 2014.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct. Executed this 23rd day of December 2014, in Santa
Monica, California.

/s/ Steven A. Heath

Steven A. Heath

Case No. 3:10-cv-00617-SC

Exhibit 1 to Heath Declaration

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

CHAPTER 7

IMAGE RENT A CAR, INC., CASE NO. 1-11-42390

Debtor,

GREGORY MESSER, ESQ., as Trustee of the
estate of Image Rent A Car,

Plaintiff,

-against-

SCHNEIOR ZILBERMAN, ADIR GROUP, INC. ADIR RENT
A CAR, INC., ADIR PLAZA, INC., GROUP TRAVEL
SOLUTION, INC. AND GAD SEBAG,

Defendants.

26 Court Street
Brooklyn, New York 11242

March 3, 2014
10:30 a.m.

EXAMINATION BEFORE TRIAL of GROUP TRAVEL SOLUTION, a Defendant, by a witness, CHANA VILENKRIN, taken by the Respective Parties, in the above-entitled action, held at the above time and place, pursuant to Subpoena, taken before MARISA MCMAHON, a shorthand reporter and Notary Public within and for the State of New York.



1 CHANA VILENKN

2 C H A N A V I L E N K I N , the witness
3 herein, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. PILEVSKY:

8 Q. State your name for the record,
9 please.

10 A. Chana Vilenkin.

11 Q. State your address for the record,
12 please.

13 A. 391 Empire Boulevard, Brooklyn, New
14 York 11225.

15 Q. Good morning. My name is Jordan
16 Pilevsky, I'm from Lamonica, Herbst and
17 Maniscalco. We represent Gregory Messer. He
18 is a Chapter 7 bankruptcy trustee of Image
19 Rent A Car, Incorporated, and the Plaintiff
20 in the adversary proceeding which brings us
21 here today. You are here today pursuant to a
22 third party subpoena in this adversary
23 proceeding.

24 Is this your first time being in a
25 deposition?



1 CHANA VILENKN

2 **A. No.**

3 Q. Were you ever authorized to sign any
4 asset purchase agreements on behalf of Image
5 Rent A Car?

6 **A. No.**

7 Q. Were you ever authorized to sign any
8 Department of Motor Vehicle documents on
9 behalf of Image Rent A Car?

10 **A. Yes.**

11 Q. Who authorized you to do that?

12 **A. Schneior.**

13 Q. Schneior Zilberman?

14 **A. Yes.**

15 Q. Who owned Image Rent A Car?

16 **A. I believe Gad Sebag.**

17 Q. Who is Gad Sebag?

18 **A. Schneior's family.**

19 Q. Was Gad Sebag involved in the
20 day-to-day operations of Image Rent A Car?

21 **A. No.**

22 Q. Did you often did you see him at the
23 site of Image Rent A Car?

24 **A. Occasionally.**

25 Q. How often?



1 **CHANNA VILENKNIN**

2 MR. PILEVSKY: I'm going to mark
3 as exhibit number 9, starting with
4 9, because we previously marked
5 exhibits 1 through 7, I may or may
6 not have exhibit 8. I'm going to
7 mark this as exhibit 9.

8 (Whereupon, a document was marked
9 as Plaintiff's Exhibit 9 for
10 identification as of this date.)

11 Q. If you could take a look at this
12 with your counsel and let me know when you
13 are ready for your next question.

14 **A. Okay.**

15 Q. Plaintiff's Exhibit 9 is an e-mail
16 from Connie@ImageRentACar.com to
17 DavidLipsker@gmail.com and CCing
18 info@ImageRentAcar.com. It's dated February
19 15, 2011, which is approximately one month
20 before the date in which Image Rent A Car
21 filed for bankruptcy relief. Are you
22 familiar with this e-mail?

23 **A. I don't.**

24 Q. Have you ever seen this e-mail
25 before?



1 CHANA VILENKN

2 A. No. I'm only seeing it now.

3 Q. This is your first time seeing this
4 e-mail?

5 A. Yes.

6 Q. Did you ever write this e-mail?

7 A. I don't recall.

8 Q. Are you aware which provider
9 provides e-mail services for Image Rent A
10 Car?

11 A. No.

12 Q. If you look down on the first page,
13 C, "There is another aspect to consider,
14 civil fraud, it's not as bad as criminal
15 fraud. The court looks to any transactions
16 within the last year prior to filing
17 bankruptcy. You are proposing moving assets
18 from Image just prior to filing. That can be
19 interpreted as fraud. Have to see when it
20 sold Image's assets. If within the past
21 year, they may reverse those sales so the
22 money is there." Do you recall writing this?

23 A. No.

24 Q. Do you all ever having a
25 conversation with respect to any type of



1 CHANA VILENKN

2 transfer of moving of assets prior to the
3 filing or Image's bankruptcy?

4 **A. No.**

5 Q. Who else had access to
6 Connie@ImageRentACar.com's e-mail address?

7 **A. I don't know.**

8 Q. Did you ever speak to Nossen Kopel?

9 **A. Never heard the name.**

10 Q. Do you know who Nossen Kopel is?

11 **A. No.**

12 Q. F states, "If you want to talk to
13 him he can be reached at the e-mail at
14 Nkopel@comcast.net." It contains a cell
15 number and telephone number. Did you ever
16 e-mail Nkopel@comcast.net?

17 **A. Not that I know of.**

18 Q. Is it your testimony now that you
19 have no idea what this e-mail is about?

20 **A. I don't recall this e-mail. I don't**
21 **know.**

22 Q. You don't recall this e-mail or you
23 never drafted this e-mail?

24 **A. I'm surprised to see such an e-mail.**

25 Q. Is it still your testimony you were



1 CHANA VILENKIN

2 not aware that Image was contemplating a
3 bankruptcy filing before it actually filed?

4 **A. I don't recall.**

5 Q. There is an e-mail below dated
6 February 15, 2011 at 12:28 again from
7 Connie@ImageRentACar.com, signed off as
8 thanks C-H-A-N-I-E. Do you see that?

9 **A. I see that.**

10 Q. It indicates that Chanie or that you
11 tried to contact Nelson and that Image Rent A
12 Car needs to file for bankruptcy, does this
13 help refresh your recollection?

14 **A. No.**

15 Q. Did you set up the e-mail account
16 Connie@ImageRentACar.com?

17 **A. No.**

18 Q. Did someone else set it up for you?

19 **A. Yes.**

20 Q. Who did?

21 **A. Probably Schneior.**

22 Q. Did Schneior Zilberman give you this
23 e-mail address?

24 **A. Yes.**

25 Q. Do you have any knowledge as to who



1 CHANA VILENKIN

2 Schneior contacted for the purpose of forming
3 Image Rent A Car's e-mail addresses?

4 MS. ROSENTHAL: Objection. If
5 anyone.

6 **A. No.**

7 Q. Who was the recipient of e-mails to
8 the e-mail address info@ImageRentACar.com?

9 A. At one point it was Schneior. Right
10 now, I don't know.

11 Q. Do you have any knowledge as to why
12 anybody or yourself would be speaking to
13 David Lipsker or e-mailing David Lipsker
14 about a bankruptcy filing?

15 **A. No.**

16 **EXAMINATION BY**

17 MR. GERSHBURG:

18 Q. Just a few follow-up questions. You
19 had testified before that you were unaware of
20 Image Rent A Car filing for bankruptcy, is
21 that correct?

22 **A. Prior.**

23 Q. Prior?

24 **A. Yes.**

25 Q. And you just testified, if I'm



1 CHANA VILENKN

2 correct, that you were surprised to see this
3 e-mail?

4 **A. Yes.**

5 Q. Can you concretely state that you
6 did not write this e-mail?

7 A. No. I don't recall every e-mail I
8 ever wrote. This e-mail doesn't look
9 familiar, but I can't say I didn't write it.
10 I don't recall.

11 Q. Can you state whether or not you
12 wrote this e-mail?

13 A. No.

14 Q. No, you cannot state for certain?

15 A. Right.

16 Q. Whether you wrote it?

17 A. Right.

18 Q. If you did not know of Image's
19 pending bankruptcy, would there be any reason
20 you would send an e-mail like this?

21 A. No.

22 Q. Do you know if at any time Nossan
23 Kopel represented Image Rent A Car?

24 A. No.

25 Q. Had you ever met Nossan Kopel prior



1 CHANA VILENKN

2 C E R T I F I C A T E

3

4 I, MARISA MCMAHON, a shorthand
5 reporter and Notary Public for and within the
6 State of New York, do hereby certify:

7 That the witness(es) whose testimony is
8 hereinbefore set forth was duly sworn by me,
9 and the foregoing transcript is a true record
10 of the testimony given by such witness(es).

11 I further certify that I am not related
12 to any of the parties to this action by blood
13 or by marriage and that I am in no way
14 interested in the outcome of this matter.

15

16

17

MARISA MCMAHON
MARISA MCMAHON

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1
2 **CERTIFICATE OF SERVICE**
3

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**
5

6 I am employed in the aforesaid county, State of California; I am over the age of 18
7 years and not a party to the within action; my business address is Heath & Steinbeck,
8 LLP, 2500 Broadway, Suite F-125, Santa Monica, California 90404.

9 On December 23, 2014, I served the **DECLARATION OF STEVEN A. HEATH**
10 **IN SUPPORT OF DEFENDANT GAD SEBAG'S MOTION FOR SUMMARY**
11 **JUDGMENT** on the interested parties in this action:

12 **(BY E-MAIL OR ELECTRONIC TRANSMISSION)**
13

14 The document was served on the following via The United States District Court –
15 Northern District's CM/ECF electronic transfer system which generates a Notice
16 of Electronic Filing upon the parties, the assigned judge, and any registered user
17 in the case:

18 Karl S. Kronenberger, Esq.
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22 San Francisco, CA 94108
23 karl@krinternetlaw.com
24 jeff@krinternetlaw.com

25 *Attorneys for Plaintiff Digby Adler Group, LLC*

26 **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and
27 correct, and that I am employed at the office of a member of
28 the bar of this Court at whose direction the service was made.

29 Executed on December 23, 2014, here, at Santa Monica, California.

30

/s/ Steven A. Heath